

### **Agenda Item 3: Special Resolution for the Amendment of the Constitution Annual General Meeting on 21 November 2019**

#### **Proposed amendments to Constitution**

Notice is hereby given pursuant to section 249L(1) of the *Corporations Act* 2001 and to the Resolution of the board meeting on 26 September 2019 that it is intended that the following motion be proposed as a special resolution at the AGM on 21 November 2019.

#### **Special Resolution**

To consider and, if thought fit, pass the following resolution as a special resolution:

“That the Constitution of Reserve Bank Health Society Limited (RBHS) in the form presented to the Annual General Meeting be adopted as the Constitution of RBHS in substitution for and to the exclusion of the RBHS existing Constitution.”

#### **Explanatory Memorandum for Reserve Bank Health Society Limited**

The RBHS Board has undertaken a review of the existing Constitution to determine its compliance with the company’s regulatory and legislative obligations as well as to implement necessary improvements. Since the Constitution was last reviewed there have been a number of developments to relevant legal and regulatory obligations and general corporate governance principles. Given these developments, the RBHS Board has determined that it is more appropriate to adopt a new modernised Constitution to reflect these changes and to align with best practice.

The following pages provides information on each Rule including commentary on where amendments are made to existing Rules.

Please note that for the purposes of this Special Resolution and Explanatory Memorandum the terms Article and Rule are interchangeable.

None of the proposed amendments will materially alter the nature of the business the Company currently conducts.

## CLAUSE 1 – PRELIMINARY

### 1.1 Company Limited by guarantee (Previously clause 2.6(1))

No substantive change

### 1.2 Objects of the Company (Previously clause 2.1)

**Article 1.2 – Objects of the Company** – It is proposed that the existing Rule 2.1 be replaced with a new rule (Rule 1.2 of the proposed Constitution) to allow for 'Restricted Access Group' to be defined in the RBHS Fund Rules. The Private Health Insurance (Prudential Supervision) Act 2015 allows for a Restricted Access Group to be defined in the Fund Rules and doing so will make it easier for RBHS to make changes to the eligibility criteria for members as and when it may be required.

Existing Article	New Article
<p><b>2.1. Objects</b></p> <p>The objects for which the <i>company</i> is established are:</p> <p>(a) to provide health and welfare facilities and services for <i>members</i> or their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical and physiotherapy benefits;</p> <p>(b) to provide facilities and benefits for the relief and maintenance of <i>members</i> or their dependants in the case of death, sickness, disability or accident;</p> <p>(c) to provide any products or services for <i>members</i> or their dependants which the <i>company</i> may from time to time deem beneficial to such <i>persons</i>; and</p> <p>(d) to conduct and manage the <i>Health Fund</i> as a private health insurer under the <i>Private Health Insurance Act</i> for the benefit of those <i>persons</i> comprising the <i>Restricted Access Group</i>, being:</p> <p>I. any <i>person</i> who is, or was, an employee of the Reserve Bank of Australia or Note Printing Australia Limited;</p> <p>II. any <i>person</i> who, by the operation of the <i>Private Health Insurance (Registration) Rules</i>, is taken to belong to the <i>Restricted Access Group</i>.</p>	<p><b>1.2 Objects of the Company</b></p> <p>The objects of the Company are:</p> <p>1.2.1 to operate as a private health insurer and to conduct Health Benefits Funds within Australia for the purposes of carrying on health insurance business and/or health related business for the benefit of those persons comprising the Restricted Access Group;</p> <p>1.2.2 to provide health and welfare facilities and services for members or their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical and physiotherapy benefits;</p> <p>1.2.3 to provide facilities and benefits for the relief and maintenance of members or their dependants in the case of death, sickness, disability or accident; and</p> <p>1.2.4 to provide any products or services for members or their dependents which the Company may from time to time deem beneficial to such persons.</p>

### 1.3 Application of income and property (Previously clause 2.3A)

No substantive change

### 1.4 Certain payments allowed (Previously clause 2.3A)

No substantive change

### 1.5 Replaceable rules (Previously clause 1.4)

No substantive change

## 1.6 Definitions (Previously clause 1.1)

**Article 1.6 – Definitions** – It is proposed that the following changes be made to the Definitions:

1. The introduction of the definitions for the following words/terms:
  - AGM
  - Appointed Actuary
  - Appointed Director
  - Approved Fees
  - Chair
  - Deputy Chair
  - Elected Director
  - Fit and Proper Policy
  - Governance Standard; and
  - Independent Director
  - PHI (Prudential Supervision) Act
2. The removal of the definitions for the following words/terms:
  - ASIC
  - Constitution; and
  - General Meeting
3. Non-substantive changes to all other definitions.

The proposed changes are provided in detail below.

Existing Article	New Article
<p><b>1.1. Definitions</b></p> <p>In this <b>Constitution</b> unless a contrary intention is indicated:</p> <p><b>‘Act’</b> means the <i>Corporations Act 2001</i> (Cth);</p> <p><b>‘ASIC’</b> means Australian Securities &amp; Investments Commission;</p> <p><b>‘board’</b> means the board of <b>directors</b> of the <b>company</b>;</p> <p><b>‘company’</b> means Reserve Bank Health Society Limited (ABN 91 087 648 735);</p> <p><b>‘Constitution’</b> means the <b>Constitution</b> of the <b>company</b> as amended from time to time;</p> <p><b>‘director’</b> means a <b>director</b> of the <b>company</b>;</p> <p><b>‘general meeting’</b> means a general meeting of the <b>members</b>;</p> <p><b>‘Health Fund’</b> means the health benefits fund operated by the <b>company</b>;</p>	<p><b>1.6 Definitions</b></p> <p>The following definitions apply in this document.</p> <p><b>Act</b> means the <i>Corporations Act 2001</i> (Cth).</p> <p><b>AGM</b> means an annual general meeting of the Company.</p> <p><b>Appointed Actuary</b> has the same meaning as in the PHI (Prudential Supervision) Act.</p> <p><b>Appointed Director</b> means a Director appointed by the Board in accordance with rule 4.9 (but does not include a Director appointed to fill a casual vacancy in the office of an Elected Director).</p> <p><b>Approved Fees</b> for a Director, means fees, salary, bonuses, fringe benefits and superannuation contributions provided by the Company, but does not include:</p> <p style="padding-left: 20px;">(a) A payment made as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office); or</p>

<p>'<b>Health Fund Rules</b>' means the rules of the <b>Health Fund</b>;</p> <p>'<b>member</b>' means a <b>person</b> whose name has been entered for the time being in the <b>Register of Members</b>;</p> <p>'<b>ordinary resolution</b>' means a resolution passed at a <b>general meeting</b> by a majority of the votes cast by <b>members</b> entitled to vote on the resolution;</p> <p>'<b>person</b>' means a natural person and includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the <b>person</b>, as the context requires;</p> <p>'<b>Private Health Insurance Act</b>' means the <i>Private Health Insurance Act 2007</i> (Cth);</p> <p>'<b>Prudential Standard</b>' has the same meaning as in the <b>Private Health Insurance Act</b>;</p> <p>'<b>Register of Members</b>' means the register of members kept as required by sections 168 and 169 of the <b>Act</b>;</p> <p>'<b>Restricted Access Group</b>' has the same meaning as in the <b>Private Health Insurance Act</b> and comprises the <b>persons</b> described in rule 2.1(d);</p> <p>'<b>secretary</b>' means any <b>person</b> who is appointed in accordance with the <b>Act</b> to the statutory office of company secretary;</p> <p>'<b>special resolution</b>' has the meaning given by section 9 of the <b>Act</b>.</p>	<p>(b) An insurance premium paid by the Company or an indemnity under rule 12.</p> <p><b>Board</b> means the Directors acting collectively under this document.</p> <p><b>Chair</b> means the Director elected under rule 13.4 to chair meetings of the Directors.</p> <p><b>Company</b> means the company named at the beginning of this document whatever its name is for the time being.</p> <p><b>Director</b> means a person who is, for the time being, a director of the Company.</p> <p><b>Deputy Chair</b> means the Director elected under rule 13.4 to chair meetings of the Directors in the absence of the Chair.</p> <p><b>Elected Director</b> means:</p> <p>(a) a Director elected by the Company in accordance with rule 4.3.1 or rule 4.3.2;</p> <p>or</p> <p>(b) a Director appointed by the Board to fill a casual vacancy in the office of an Elected Director in accordance with rule 4.6.</p> <p><b>Fit and Proper Policy</b> means the fit and proper policy of the Company (as defined in <i>Prudential Standard HPS 001 – Definitions</i> made under section 92(1) of the PHI (Prudential Supervision) Act) adopted by the Company in accordance with <i>Prudential Standard CPS 520 – Fit and Proper</i> made under section 92(1) of the PHI (Prudential Supervision) Act.</p> <p><b>Governance Standard</b> means <i>Prudential Standard CPS 510 – Governance</i> made under section 92(1) of the PHI (Prudential Supervision) Act.</p> <p><b>Health Benefits Fund</b> has the same meaning as in the PHI Act.</p> <p><b>Health Benefits Fund Rules</b> means the rules of any Health Benefits Fund conducted by the Company.</p> <p><b>Independent Director</b> has the same meaning as in the Governance Standard.</p> <p><b>member</b> means a person whose name is entered in the Register as a member of the Company.</p> <p><b>ordinary resolution</b> means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.</p> <p><b>PHI Act</b> means the <i>Private Health Insurance Act 2007</i> (Cth).</p> <p><b>PHI (Prudential Supervision) Act</b> means the <i>Private Health Insurance (Prudential Supervision) Act 2015</i> (Cth).</p> <p><b>PHI Legislation</b> means:</p> <p>(a) the PHI Act; and</p>
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	<p>(b) the PHI (Prudential Supervision) Act.</p> <p><b>Prudential Standards</b> has the same meaning as in the PHI (Prudential Supervision) Act.</p> <p><b>Register</b> means the register of members kept as required by sections 168 and 169 of the Act.</p> <p><b>Restricted Access Group</b> means those persons to whom the Company's complying health insurance products are, or will be, available (as defined in the Health Benefits Fund Rules).</p> <p><b>Secretary</b> means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.</p> <p><b>special resolution</b> has the meaning given by section 9 of the Act.</p>
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### 1.7 Interpretation (Previously clause 1.2)

No substantive change

## CLAUSE 2 – MEMBERSHIP

### 2.1 Membership (Previously clause 3)

**Article 2.1 – Membership** – It is proposed that the existing Rule 3 be replaced with a new rule (Rule 2.1 of the proposed Constitution) to clarify that ‘members’ are either members as at the date of the adoption of the Constitution or persons admitted to membership in accordance with the Constitution.

Existing Article	New Article
<p><b>Division 3 Membership</b></p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><b>Corporations Act 2001 Commentary</b></p> <p>A <i>person</i> becomes a <i>member</i> of the <i>company</i> if the <i>person</i> agrees to become a <i>member</i> and the <i>company</i> enters the <i>person's</i> name in the <b>Register of Members</b>: see s 231.</p> </div>	<p><b>2.1 Membership</b></p> <p>The members are:</p> <p>2.1.1 the members included on the Register as at the date of the adoption of this document; and</p> <p>2.1.2 any other person admitted to membership by the Board in accordance with this document.</p>

### 2.2 Limited Liability of Members (Previously clause 2.6(2))

No substantive change

### 2.3 Admission to membership (Previously clause 3.1)

No substantive change

### 2.4 Ceasing to be a member (Previously clause 4.1) and 2.5 Cessation due to unpaid premiums (No equivalent provision)

**Articles 2.4 and 2.5 – Ceasing to be a member and Cessation due to unpaid premiums** – It is proposed that the existing Rule 4.1 be replaced with new rules (Rule 2.4 and Rule 2.5 of the proposed Constitution) to provide an allowance for the cessation of membership where:

1. a member has failed to pay premiums for a period of two months after they have become due and payable; and
2. where demand has been made by RBHS in accordance with the Constitution.

Cessation by a member’s written resignation has been moved to a separate clause (2.6), though there has been no substantive change to this process.

Existing Article	New Article
<p><b>4.2 Removal from Register of Members</b></p> <p>(1) The <b>board</b> must remove the name of a <b>member</b> ceasing to be a <b>member</b> from the <b>Register of Members</b>.</p> <p>(2) The <b>company</b> may remove a <b>member’s</b> name from the <b>Register of Members</b> if the <b>member</b>:</p> <p>(a) dies; or</p> <p>(b) becomes bankrupt.</p> <p><b>4.4 Effect of cessation of membership</b></p> <p>Subject to rule 2.6 a <b>person</b> who ceases to be a <b>member</b> shall continue to be liable for all moneys due by the <b>member</b> to the <b>company</b>. A <b>member</b> ceasing to be a <b>member</b> does not have any claim on the <b>company</b>, its funds or property (other than as may arise as a <b>person</b> insured under a complying health insurance policy issued by the <b>company</b>).</p>	<p><b>2.4 Ceasing to be a member</b></p> <p>2.4.1 A member's membership of the Company ceases if:</p> <p>(a) any premiums due and payable by the member under a complying health insurance policy issued by the Company are in arrears for a period of two months after they become due and payable and demand has been made by the Company in accordance with rule 2.5.1;</p> <p>(b) the member resigns according to rule 2.6;</p> <p>(c) the member is expelled according to rule 2.7; or</p> <p>(d) the member ceases to be insured under a complying health insurance policy issued by the Company.</p> <p>2.4.2 The Secretary must remove the name of a member ceasing to be a member from the Register.</p> <p>2.4.3 A member ceasing to be a member:</p> <p>(a) does not have any claim on the Company, its funds or property (other than as may arise as a person insured under a complying health insurance policy issued by the Company); and</p> <p>(b) without limiting any other right of the Company:</p> <p>(i) is and remains liable to pay premiums due and payable under a complying health insurance policy issued to them by the Company;</p> <p>(ii) is and remains liable to repay to the Company any benefits paid to the member (or any other person) under a complying health insurance policy issued by the Company:</p> <p>(A) during the period in which premiums are in arrears; or</p> <p>(B) where rule 2.7.1(b) applies, which the Company would not have been required to pay if the member had not obtained membership by fraud or deceit; and</p> <p>(iii) is and remains liable for any other amounts due and payable to the Company (including amounts liable to be paid or repaid to the Company under the Health Benefits Fund Rules and amounts liable to be paid to the Company under rule 2.2).</p> <p><b>2.5 Cessation due to unpaid premiums</b></p> <p>2.5.1 Before a member whose premiums under a complying health insurance policy</p>

	<p>issued by the Company are in arrears ceases to be a member in accordance with rule 2.4.1(a), the Company must send two warning notices advising the member they are in arrears and that their membership will be cancelled if they remain in arrears for more than two months.</p> <p>2.5.2 If the member does not pay any unpaid premiums in full in accordance with the notices, the member will cease to be a member on the date set out in the notice as the latest date for payment.</p> <p>2.5.3 During the period when a member's premiums under a complying health insurance policy issued by the Company are in arrears, the member ceases to have the right to receive notice of or to attend or vote at any general meeting of the Company. The rights referred to in this rule shall be restored immediately on the member paying the unpaid premiums in full or otherwise on reinstatement of the member in accordance with rule 2.8.</p>
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**2.6 Resigning as a member (Previously clause 4.1(a))**

No substantive change

**2.7 Suspending or expelling a member (Previously clause 4.3)**

<p><b>Article 2.7 – Suspending or expelling a member</b> – It is proposed that the existing Rule 4.3 be replaced with new rules (Rule 2.7 and Rule 2.8 of the proposed Constitution) to provide greater flexibility to the Member and the Board in respect of the Termination Process. The current Constitution places a strict requirement that a member must attend and either personally or through their legal representative address the allegations to the Board. This doesn't allow for any flexibility or discretion by the Board for circumstances where the Member is unable to attend the meeting but still wants to provide a response. The new Constitution provides greater flexibility in that it allows the member to address the allegations in writing before the meeting or, at the Board's discretion, verbally at the meeting.</p>	
<p><b>Existing Article</b></p>	<p><b>New Article</b></p>

#### 4.3 Termination by the Board

(1) The **company** may terminate a **person's** membership by **board** resolution if:

(a) the **member** fails to discharge the **member's** obligations to the **company**, including the obligation to comply with this **Constitution**;

(b) the **member** is guilty of conduct that the **board** reasonably considers to be detrimental to the **company**; or

(c) the **member** obtains membership by misrepresentation or mistake.

(2) At least 14 days before the **board** holds a meeting to terminate a membership, the **board** must give a written notice to the **member** which states the allegations against the **member** and the proposed resolution to terminate his or her membership.

(3) At the time, the board considers the proposed resolution, the **member** is entitled:

(a) to be present with or without the **member's** legal representative; and

(b) to be heard, either in person or through the **member's** legal representative.

(4) The **board** may determine, where permitted by law, that a **person** whose membership in the **company** is terminated ceases to be insured under a complying health insurance policy issued by the **company**.

(5) Subject to rule 3.1, the **board** may reinstate a **member** who has ceased to be a **member** and restore the name of that **member** to the **Register of Members** subject to any terms and conditions that the **board** decides.

#### 2.7 Suspending or expelling a member

2.7.1 Subject to rule 2.7.2, the Board may resolve to suspend or expel from membership of the Company any member:

(a) who does not comply with this document or the Health Benefits Fund Rules;

(b) who has obtained membership of the Company by fraud or deceit; or

(c) whose conduct as a member is prejudicial to the interests of the Company, and remove that member's name from the Register. Nothing in this rule 2.7 limits any other remedy of the Company (including under the Health Benefits Fund Rules).

2.7.2 Before suspending or expelling a member, the Board must give written notice to the member at least 14 days' before the meeting of the Board at which the resolution to suspend or expel the member is being proposed which:

(a) states the allegations against the member;

(b) proposes the suspension or expulsion of the member; and

(c) invites the member to address the allegations either in writing before the meeting or, at the Board's discretion, verbally at the meeting.

2.7.3 The Board may determine, where permitted by law, that a person who is expelled from the Company ceases to be insured under a complying health insurance policy issued by the Company.

#### 2.8 Reinstating a member

The Board may reinstate a member who has ceased to be a member and restore the name of that member to the Register subject to any terms and conditions that the Board determines.

#### 2.8 Reinstating a member (Previously clause 4.3(5))

No substantive change

### CLAUSE 3 – HEALTH BENEFITS FUND

#### 3.1 Health Benefits Fund (Previously clause 9.1(3))

No substantive change

#### 3.2 Health Benefits Fund Rule (Previously clause 9.1(3))

No substantive change



### 3.3 Prohibitions (Previously clause 9.1(3))

No substantive change

## CLAUSE 4 – DIRECTORS

### 4.1 Composition of the Board (Previously clause 8.1)

**Article 4.1 – Composition of the Board** – It is proposed that the existing Rule 8.1 be replaced with a new rule (Rule 4.1 of the proposed Constitution) to meet the Corporations Act Board limit obligations. The proposed rule provides that directors can only set a number of directors lower than the maximum specified in the Constitution with the approval of members in general meeting. This is to prevent the directors from controlling the composition of the Board by declaring ‘no vacancy’ where a vacancy exists.

The addition of the requirement that the Company must have a majority of Independent Directors at all times is a regulatory requirement (CPS 510 – Governance).

Existing Article	New Article
<p><b>8.1. Number of Directors</b></p> <p>The <b>board</b> must comprise of not more than seven (7) <b>directors</b> of which:</p> <p>(a) up to seven (7) <b>directors</b> are elected by the <b>members</b> of the <b>company</b>; and</p> <p>(b) subject to rule 8.7, up to two (2) <b>directors</b> may be appointed by the <b>board</b> provided that the total number of all <b>directors</b> on the <b>board</b> shall not exceed (7). A <b>director</b> appointed by the <b>board</b> to fill a casual vacancy is not counted as an appointment for the purposes of this rule 8.1</p>	<p><b>4.1 Composition of the Board</b></p> <p>4.1.1 Subject to rule 4.1.2, the Company must have:</p> <p>(a) seven Elected Directors; and</p> <p>(b) up to two Appointed Directors.</p> <p>4.1.2 The Board may from time to time decide to increase or decrease the maximum number of Directors. However, a reduction in the maximum number of directors determined at any one time requires the passing of an ordinary resolution of the members.</p> <p>4.1.3 The Company must have a majority of Independent Directors at all times.</p> <p>4.1.4 A majority of Directors must ordinarily reside in Australia.</p>

### 4.2 Eligibility (Previously clause 8.2)

**Article 4.2 – Eligibility** – It is proposed that the existing Rule 8.2 be replaced with a new rule (Rule 4.2 of the proposed Constitution) to specify that neither the auditor (nor any employee of the auditor) nor any employee of RBHS be eligible to be a director of RBHS.

Existing Article	New Article
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## 8.2. Eligibility

A **person** is not eligible to be a **director** if the **person** is or becomes ineligible to be a **director** under rule 8.4.

## 4.2 Eligibility

4.2.1 Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.  
4.2.2 An employee of the Company is not eligible to be a Director.  
4.2.3 A person is not eligible to act as a Director if the person is, or becomes, ineligible to be a Director under rule 4.10.

## 4.3 Elected Directors (Previously 8.3 (in part)), 4.4 Elected Directors – nomination (No equivalent provision) and 4.5 Elected Directors – election procedure (Previously 8.3 (in part))

**Article 4.3, 4.4 and 4.5 – Elected Directors, Elected Directors – nomination and Elected Directors – election procedure** – It is proposed that the existing Rule 8.3 be replaced with new rules (Rule 4.3, Rule 4.4 and Rule 4.5 of the proposed Constitution) to:

- (a) Clarify how Elected Directors are appointed if no election is held or an Elected Director is removed from office (Rule 4.3);
- (b) Provide a detailed procedure for nomination to the office of Elected Director (and the vetting of nominations). This procedure contemplates, in particular, the assessment of nominees against a formal Fit and Proper Policy which is a regulatory requirement (CPS 520 – Fit and Proper) (Rule 4.4); and
- (c) Detail the election procedure for election by ballot at the AGM (Rule 4.5).

### Existing Article

#### 8.3. Election of Directors

- (1) Subject to this **Constitution**, section 201E of the **Act** and to the number of **directors** for the time being fixed under rule 8.1 not being exceeded, the **company** may elect **directors** in accordance with this rule 8.3.
- (2) A candidate for election as a **director** must submit to the **company** at its registered office by 5:00pm on the day that is 60 days prior to the date of the annual general meeting of the **company** at which the candidate seeks election:
- (i) a nomination in writing in such form as the **board** requires; and
  - (ii) a written consent to act as **director**, signed by the candidate.
- (3) If the number of candidates for election as **directors** is equal to or less than the number of vacancies on the **board**, those candidates will be elected as directors by **ordinary resolution** of the **members** at the annual general meeting.
- (4) If the number of candidates for election as **directors** is greater than the number of vacancies on the **board**, a ballot of the **members** of the **company** must be held in accordance with this rule for the election of **directors**. Each **member** eligible to vote at the annual general meeting at which the election of **directors** is to be declared is entitled to lodge a direct vote in respect of that ballot in advance of the annual general meeting.
- (5) The **directors** may determine that a direct vote may be lodged with the **company** by means specified by the **directors**. The **directors** may specify procedures and rules for direct voting.
- (6) The **board** must appoint a person, being a **member** or a **director** who is not standing for election or re-election as a **director**, as the returning officer for the

### New Article

#### 4.3 Elected Directors

- 4.3.1 Subject to this document, section 201E of the Act and to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Company must elect Elected Directors in accordance with rule 4.5.
- 4.3.2 If, for any reason:
- (a) the Board fails to conduct an election in accordance with rule 4.5; or
  - (b) the number of Elected Directors is reduced below the minimum required by rule 4.1 (including by removal from office under rule 4.11), then, subject to this document, section 201E of the Act and to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Company may appoint Elected Directors by ordinary resolution.
- 4.3.3 Subject to rule 4.3.4, an Elected Director appointed by ordinary resolution automatically retires at the next annual general meeting and is eligible to nominate for re-election under rule 4.4.
- 4.3.4 An Elected Director appointed by ordinary resolution to replace an Elected Director removed from office shall hold office for the remainder of the original term of office of the Elected Director removed from office and is eligible to nominate for re-election under rule 4.4.
- #### 4.4 Elected Directors – nomination
- 4.4.1 Any two members of the Company may nominate a person to be elected as an Elected Director by submitting to the Secretary a nomination in writing:
- (a) specifying the name and address of the person nominated for election and both members proposing them; and

election of **directors**.

(7) The returning officer must send to each **member** eligible to vote at the annual general meeting at which the election of **directors** is to be declared a ballot paper.

(8) The returning officer must declare the result of a ballot at the annual general meeting of the **company**. The director who receives the highest number of votes is elected to the first vacancy, the director who receives the second highest number of votes is elected to the second vacancy, and so on until all vacancies are filled. In the event of an equality of votes, the returning officer must determine the candidate or candidates to be elected as **director(s)** by drawing of lots.

(b) signed by the person nominated for election and both members proposing them.

4.4.2 The person nominated for election must also submit to the Secretary:

(a) a document in the form specified by the Board for this purpose setting out:

(i) his or her qualifications and eligibility to be a Director;

(ii) his or her skills, knowledge and experience and their relevance to discharging his or her duties as a director of the Company;

(iii) whether he or she has any interest or is aware of any matter which would affect his or her independence (including any matter relevant to the assessment of whether he or she would be an Independent Director);

(iv) whether he or she holds an office or has an interest in property whereby, whether directly or indirectly, duties or interests may be created that could conflict with the interests of a Director of the Company;

(v) such matters as are necessary to determine whether he or she meets the requirements of the Fit and Proper Policy; and

(vi) any other matter the Board reasonably requires; and

(b) a written consent to act as a Director.

4.4.3 The documentation submitted in accordance with rule 4.4.2 must be received by the Secretary at least 60 days before the AGM at which the election is to take place.

4.4.4 The Secretary must submit all nominations to the Board. The Board may reject a nomination if:

(a) the Board is not satisfied that the nominee is eligible to be a Director;

(b) having regard to relevant considerations including the range of skills, knowledge and experience on the Board and the requirements of the Act, the PHI Legislation, and the Prudential Standards, the Board considers that the nominee is not qualified to be a Director and/or their skills, knowledge and experience do not satisfy a present need of the Board and/or the Company;

(c) the Board considers that, following assessment of the nominee in accordance with the Fit and Proper Policy, the nominee is not fit and proper; or

(d) the Board considers the nominee has an interest which may interfere with the exercise of his or her independent judgment (including any matter which would disqualify the nominee from being an Independent Director).

4.4.5 The functions of the Board under rule 4.4.4 may be delegated to a committee of the Board convened for this purpose.

4.4.6 A Director who is standing for election at the meeting at which the relevant election is scheduled to occur is not entitled to be present for the Board's deliberation under rule 4.4.4 and is not entitled to vote in respect of the Board's determination. The Board's

determination on the matter is final.

4.4.7 If the Board accepts a nomination, the nominee will be submitted for election in accordance with rule 4.5.

**4.5 Elected Directors – election procedure**

4.5.1 If the number of nominees accepted for election as Elected Directors is less than or equal to the number of vacancies, those nominees will be submitted to the AGM for election by ordinary resolution.

4.5.2 If the number of nominees accepted for election as Elected Directors is greater than the number of vacancies, a ballot of the members of the Company must be held in accordance with this rule 4.5. Each member eligible to vote at the AGM at which the election of Directors is to be declared is entitled to lodge a direct vote in respect of the ballot in advance of the AGM.

4.5.3 The Board may determine that a direct vote may be lodged with the Company by means specified by the Board. The Board may specify procedures and rules for direct voting (including specifying the method for authenticating votes).

4.5.4 The Board must appoint a person, being a member or a Director who is not standing for election or re-election as a Director, as the returning officer for the election of Directors.

4.5.5 After the closure of nominations in accordance with rule 4.4.3, the returning officer must ensure that the ballot is prepared (including preparing ballot papers for the election).

4.5.6 The returning officer must ensure that a ballot paper is sent to each member eligible to vote at the AGM at which the election of Directors is to be declared.

4.5.7 The returning officer must declare the result of a ballot at the AGM. The candidate with the highest number of votes will be elected to the first vacancy; the candidate with the next highest number of votes will be elected to the second vacancy; and so on, until each vacancy is filled. Where two or more candidates have received an equal number of votes, the returning officer must determine the candidate elected by the drawing of lots.

**4.6 Elected Directors – casual vacancy (Previously clause 8.7(1))**

No substantive change

**4.7 Elected Directors – retirement (Previously clause 8.5)**

No substantive change

**4.8 Time of retirement (Previously clause 8.5(4))**

No substantive change

**4.9 Appointed Directors (Previously clause 8.7)**

**Article 4.9 – Appointed Directors**– It is proposed that the existing Rule 8.7 be replaced with a new rule (Rule 4.9 of the proposed Constitution) to provide greater flexibility for term length when the Board appoints a Director. The proposed rule allows for a maximum term of 3 years, unless otherwise specified by the Board.

Existing Article	New Article
<p><b>8.7. Appointment by the Board</b></p> <p>(1) Subject to this <b>Constitution</b>, section 201E of the <b>Act</b> and to the number of <b>directors</b> for the time being fixed under rule 8.1 not being exceeded, the <b>board</b> may appoint a person to be a <b>director</b> at any time except during a <b>general meeting</b> (including to fill a casual vacancy).</p> <p>(2) The board may only appoint a <b>person</b> who is eligible to be a <b>director</b> under this rule.</p> <p>(3) Any director so appointed automatically retires at the next annual general meeting and is eligible for election by that <b>general meeting</b>.</p>	<p><b>4.9 Appointed Directors</b></p> <p>4.9.1 Subject to this document, and to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting.</p> <p>4.9.2 A person appointed by the Board to be a Director under rule 4.9.1 (an <b>Appointed Director</b>) holds office for the term specified by the Board (not exceeding three years).</p>

**4.10 Eligibility for appointment and cessation of a Director’s appointment (Previously clause 8.4)**

**Article 4.10 – Eligibility for appointment and cessation of a Director’s appointment** – It is proposed that the existing Rule 8.4 be replaced with a new rule (Rule 4.10 of the proposed Constitution) so that it includes automatic cessation where a director is determined not to meet the requirements of the Fit and Proper Policy.

Existing Article	New Article
<p><b>8.4. Eligibility for Appointment and Automatic Vacation of Office</b></p> <p>(1) A <b>person</b> automatically ceases to be eligible to be a <b>director</b> and, if already appointed, automatically ceases to be a <b>director</b> if the <b>person</b>:</p> <p>(a) is not permitted by the <b>Act</b> (or an order made under the <b>Act</b>) to be a <b>director</b>;</p> <p>(b) becomes disqualified from managing corporations under Part 2D.6 of the <b>Act</b> and is not given permission or leave to manage the <b>company</b> under section 206F or 206G of the <b>Act</b>;</p> <p>(c) dies;</p> <p>(d) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;</p> <p>(e) becomes of unsound mind or mentally incapable of performing the functions of that office;</p> <p>(f) is absent without permission of the <b>board</b> from either 3 consecutive meetings of the <b>board</b> or 3 meetings of the <b>board</b> held in any financial year; or</p> <p>(g) is a disqualified <b>person</b> as defined in the <b>Private Health Insurance Act</b> (including where the Private Health Insurance Administration Council has determined that the <b>person</b> is not a fit and proper <b>person</b> to be or to act as a director of a private health insurer).</p> <p>(2) Neither the <b>board</b> or the <b>members</b> at a <b>general meeting</b> may waive the</p>	<p><b>4.10 Eligibility for appointment and cessation of a Director's appointment</b></p> <p>4.10.1 A person is not eligible to be a Director unless:</p> <p>(a) the person has been assessed in accordance with the Fit and Proper Policy; and</p> <p>(b) is determined by the Board to meet the requirements of the Fit and Proper Policy.</p> <p>4.10.2 A person is not eligible to be a Director and, if already appointed, a person automatically ceases to be a Director if the person:</p> <p>(a) is not permitted by the Act (or an order made under the Act) to be a director;</p> <p>(b) is disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;</p> <p>(c) is of unsound mind or physically or mentally incapable of performing the functions of that office; or</p> <p>(d) is determined to be a disqualified person under the PHI (Prudential Supervision) Act.</p> <p>4.10.3 A person automatically ceases to be a Director if the person:</p> <p>(a) fails to attend 3 consecutive meetings of the Board or any 3 meetings of the Board in any financial year;</p> <p>(b) resigns by notice in writing to the Company;</p> <p>(c) is removed from office under rule 4.11;</p>

operation of this rule.

(d) ceases to be eligible to act as a Director under rule 4.2.1 or 4.2.2; or

(e) is directly or indirectly interested in any material contract or proposed contract with the Company and fails to disclose the interest in accordance with rule 10.3.

#### **4.11 Removal from office (No equivalent provision)**

**Article 4.11 – Removal from office** – Proposed rule 4.11 provides that the Company may, by ordinary resolution, remove a Director from office and this reflects the Corporations Act.

#### **New Article**

#### **4.11 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by ordinary resolution remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

#### **4.12 Too few directors (Previously clause 10.3)**

No substantive change

### **CLAUSE 5 – POWERS OF THE BOARD**

#### **5.1 Powers generally (Previously clause 9.1)**

No substantive change

#### **5.2 Exercise of powers (Previously clause 9.2)**

No substantive change

### **CLAUSE 6 – BOARD CHARTER (PREVIOUSLY CLAUSE 9.3)**

No substantive change

### **CLAUSE 7 – EXECUTING NEGOTIABLE INSTRUMENTS (PREVIOUSLY CLAUSE 9.8)**

No substantive change

### **CLAUSE 8 – DELEGATION OF BOARD POWERS (PREVIOUSLY CLAUSES 9.4 AND 10.5), AND CLAUSE 9 – BOARD COMMITTEES (PREVIOUSLY CLAUSE 10.5 (IN PART))**

**Article 8 and Article 9 – Delegation of Board Power; and Board Committees** – It is proposed that the existing rules (Rule 9.4, Rule 10.5 and Rule 10.5A of the existing Constitution) be replaced with new rules (Rule 8 and Rule 9 of the proposed Constitution) to:

- (a) Clarify that any delegation may be revoked (Rule 8);
- (b) Remove rules that make prescriptions on how committee meetings are regulated so that committees are able to regulate meetings as it thinks fit. The intention of this is so that these matters can be more conveniently addressed in the committee charter (Rule 8); and
- (c) Expressly provide for the establishment of a Board Audit Committee, Board Risk Committee and Board Remuneration Committee which are all regulatory

Existing Article	New Article
<p><b>9.4. Delegation</b></p> <p>(1) The <b>board</b> may delegate to any committee in accordance with rule 10.5 or to any other <b>person</b> any of the powers conferred on the <b>board</b> by the <b>Constitution</b> or the <b>Act</b>, provided that:</p> <ul style="list-style-type: none"> <li>(a) any delegation of a power to expend money shall be limited to a sum to be determined by the <b>board</b>; and</li> <li>(b) the <b>board</b> may permit the delegate to sub-delegate any powers delegated to them subject to any limitations imposed by the <b>board</b>.</li> </ul> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p style="text-align: center;"><b>Corporations Act 2001 Commentary</b></p> <p>The delegate must exercise the powers delegated in accordance with any directions of the <b>board</b>. A power so exercised is taken to have been exercised by the <b>board</b>: see s 198D.</p> </div> <p>(2) The <b>board</b> must ensure that the delegation is made in accordance with the <b>Prudential Standards</b>.</p> <p>(3) The <b>board</b> must establish policies for the guidance of delegates in the exercise of any powers so delegated.</p> <p>(4) A delegation must be in writing and retained as a record by the <b>company</b>.</p> <p><b>10.5. Committees of Directors</b></p> <p>(1) The <b>board</b> may delegate any of its powers and/or functions (not being duties imposed exclusively on the <b>board</b> by the <b>Act</b> or the <b>Constitution</b>) to one or more committees consisting of such number of <b>directors</b> as the <b>board</b> thinks fit.</p> <p>(2) The <b>persons</b> making up a committee may appoint one of their number as a chair of their meetings.</p> <p>(3) Each <b>person</b> making up any committee shall have one vote at meetings of that committee.</p> <p>(4) Subject to any restrictions that the <b>board</b> imposes, a committee may meet and adjourn or otherwise regulate its meeting as it thinks fit.</p> <p>(5) Questions arising at any meeting shall be determined by a majority of votes of the <b>persons</b> present and voting.</p> <p>(6) In the case of an equality of votes, the chair of that meeting will have a second or casting vote.</p>	<p><b>8. Delegation of Board Power</b></p> <p><b>8.1 Power to delegate</b></p> <p>The Board may delegate any of its powers as permitted by section 198D.</p> <p><b>8.2 Power to revoke delegation</b></p> <p>The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.</p> <p><b>8.3 Policies for guidance of delegates</b></p> <p>The Board must establish policies for the guidance of delegates in the exercise of any powers so delegated.</p> <p><b>8.4 Terms of delegation</b></p> <p>8.4.1 A delegation of powers under rule 8.1 may be made:</p> <ul style="list-style-type: none"> <li>(a) for a specified period or without specifying a period; and</li> <li>(b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.</li> </ul> <p>8.4.2 A delegation:</p> <ul style="list-style-type: none"> <li>(a) must be in writing and retained as a record by the Company; and</li> <li>(b) must be made in accordance with the Prudential Standards.</li> </ul> <p>8.4.3 A document of delegation may contain provisions for the protection and convenience of those who deal with the delegate as the Board thinks appropriate.</p> <p><b>8.5 Proceedings of committees</b></p> <p>8.5.1 Subject to the terms on which a power of the Board is delegated to a committee, the meetings of the committee may be regulated by the committee as it thinks fit.</p> <p>8.5.2 When a committee is established as required by the Prudential Standards, each such committee must be composed in accordance with, and have those functions and responsibilities required by the Prudential Standards.</p> <p><b>9. Board Committees</b></p> <p><b>9.1 Board Audit Committee</b></p> <p>9.1.1 The Board must establish a board audit committee. The board audit committee must be composed, and must operate, in accordance with the Prudential Standards.</p>

#### **10.5A. Audit committee**

- (1) The **board** must establish an audit committee.
- (2) The audit committee must have a membership consistent with, and must operate in accordance with, the **Prudential Standards**.
- (3) The functions and responsibilities of the audit committee are:
  - (a) those functions and responsibilities set out in the **Prudential Standards**; and
  - (b) such other functions and responsibilities, not inconsistent with the **Prudential Standards**, as determined by the **board**.
- (4) The **board** must adopt an audit committee charter in accordance with the **Prudential Standards**.

9.1.2 The functions and responsibilities of the board audit committee are:

- (a) those functions and responsibilities set out in the Prudential Standards; and
- (b) such other functions and responsibilities, not inconsistent with the Prudential Standards, as determined by the Board.

9.1.3 The Board must adopt a board audit committee charter in accordance with the Prudential Standards.

#### **9.2 Board Risk Committee**

9.2.1 The Board must establish a board risk committee. The board risk committee must be composed, and must operate, in accordance with the Prudential Standards.

9.2.2 The functions and responsibilities of the board risk committee are:

- (a) those functions and responsibilities set out in the Prudential Standards; and
- (b) such other functions and responsibilities, not inconsistent with the Prudential Standards, as determined by the Board.

9.2.3 The Board must adopt a board risk committee charter in accordance with the Prudential Standards.

#### **9.3 Board Remuneration Committee**

9.3.1 The Board must establish a board remuneration committee. The board remuneration committee must be composed, and must operate, in accordance with the Prudential Standards.

9.3.2 The functions and responsibilities of the board remuneration committee are:

- (a) those functions and responsibilities set out in the Prudential Standards; and
- (b) such other functions and responsibilities, not inconsistent with the Prudential Standards, as determined by the Board.

9.3.3 The Board must adopt a board remuneration committee charter in accordance with the Prudential Standards.

#### **9.4 Other committees**

This rule 9 does not limit the ability of the Board to establish other committees.

### **CLAUSE 10 – DIRECTORS DUTIES AND INTERESTS (PREVIOUSLY CLAUSE 11)**

**Article 10 – Director’s Duties and Interests** – It is proposed that the existing Rule 11 be replaced with a new rule (Rule 10 of the proposed Constitution) so that it:

- (a) specifies that each director and secretary has a duty of confidentiality, which reflects their obligations under the Corporations Act.
- (b) clarifies that a director or secretary is not to be impeded from disclosing information to APRA, which is a regulatory requirement (CPS 510 – Governance).



Existing Article	New Article
<p data-bbox="91 129 611 156"><b>Division 11 Director's Conflict of Interest</b></p> <div data-bbox="91 177 1059 328" style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p data-bbox="349 193 806 220" style="text-align: center;"><b>Corporations Act 2001 Commentary</b></p> <p data-bbox="107 248 1048 308">Part 2D.1 and Chapter 2E deal with conflicts of interest and financial benefits to related parties.</p> </div> <p data-bbox="91 363 969 391"><b>11.1. Where a Director Acts in Matters Relating to Director's Interests</b></p> <p data-bbox="91 411 358 438">(1) This rule applies if:</p> <p data-bbox="91 459 1032 518">(a) a <b>director</b> has an interest or duty in relation to a matter that is not a material personal interest; or</p> <p data-bbox="91 539 1003 598">(b) if a <b>director</b> with a material personal interest in relation to the <b>company's</b> affairs:</p> <p data-bbox="91 619 974 703">(i) complies with the requirements of section 191 of the <b>Act</b> in relation to disclosure of the nature and extent of the interest and its relation to the <b>company's</b> affairs before acting in a matter that relates to the interest; and</p> <p data-bbox="91 724 1048 783">(ii) may be present and vote on the matter under section 195(2) or section 195(3) of the <b>Act</b>.</p> <p data-bbox="91 804 1061 888">(2) The <b>director</b> may be counted in a quorum at a <b>board</b> meeting that considers the matter in which that <b>director</b> has an interest, and the <b>director</b> may be present and vote on the matter that relates to the <b>director's</b> interest.</p> <p data-bbox="91 909 913 936">(3) In relation to any transactions that relate to the <b>director's</b> interest:</p> <p data-bbox="91 957 1061 1042">(a) the <b>company</b> may proceed with any transaction that relates to the interest and the <b>director</b> may participate in the execution of any relevant document by or on behalf of the <b>company</b>;</p> <p data-bbox="91 1062 1048 1121">(b) the <b>company</b> cannot avoid the transactions merely because of the <b>director's</b> interest; and</p> <p data-bbox="91 1142 1048 1201">(c) the <b>director</b> may retain benefits under the transactions despite the <b>director's</b> interest.</p> <p data-bbox="91 1222 960 1281"><b>11.2. Where a Director Does Not Act in Matters Relating to Director's Interests</b></p> <p data-bbox="91 1302 1039 1361">(1) This rule applies if a <b>director</b> with a material personal interest in relation to a matter:</p> <p data-bbox="91 1382 954 1441">(a) complies with the requirements of section 191 of the <b>Act</b> in relation to disclosure of the nature and extent of the interest and its relation to the</p>	<p data-bbox="1086 113 1556 140"><b>10. Directors Duties and Interests</b></p> <p data-bbox="1086 161 2089 188"><b>10.1 Compliance with duties under the Act, the PHI Legislation and general law</b></p> <p data-bbox="1086 209 2116 268">Each Director must comply with his or her obligations and duties under the Act, the PHI Legislation and the general law.</p> <p data-bbox="1086 288 1585 316"><b>10.2 Director can hold other offices etc.</b></p> <p data-bbox="1086 336 1715 363">Subject to the Governance Standard, a Director may:</p> <p data-bbox="1086 384 2107 411">10.2.1 hold any office or place of profit or employment (subject to rule 4.2.1 and 4.2.2);</p> <p data-bbox="1086 432 2085 491">10.2.2 be a member of any corporation (including the Company) or partnership other than the Company's auditor;</p> <p data-bbox="1086 512 2047 539">10.2.3 be a creditor of any corporation (including the Company) or partnership; or</p> <p data-bbox="1086 560 1693 587">10.2.4 enter into any agreement with the Company.</p> <p data-bbox="1086 608 1435 635"><b>10.3 Disclosure of interests</b></p> <p data-bbox="1086 655 2063 740">10.3.1 Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty and with section 191 in respect of disclosure of material personal interests.</p> <p data-bbox="1086 761 2069 820">10.3.2 A Director may give standing notice of the nature and extent of an interest in accordance with section 192.</p> <p data-bbox="1086 841 1529 868"><b>10.4 Director interested in a matter</b></p> <p data-bbox="1086 888 2096 973">10.4.1 Each Director must comply with section 195 in relation to being present and voting at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:</p> <p data-bbox="1086 994 2114 1053">(a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;</p> <p data-bbox="1086 1074 2130 1158">(b) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;</p> <p data-bbox="1086 1179 2096 1238">(c) the Director may retain any benefits accruing to the Director under the transaction; and</p> <p data-bbox="1086 1259 2092 1318">(d) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.</p> <p data-bbox="1086 1339 2107 1398">10.4.2 If the interest is required to be disclosed under section 191, paragraph 10.4.1(c) applies only if it is disclosed before the transaction is entered into.</p> <p data-bbox="1086 1418 1525 1445"><b>10.5 Agreements with third parties</b></p>

**company's** affairs; but

(b) must not be present and vote on the matter under section 195(1) of the **Act**.

#### **Corporations Act 2001 Commentary**

Section 195 provides that a **director** of a **company** who has a material personal interest in the matter that a **board** meeting is considering must not:

- be present while the matter is being considered at the **board** meeting; or
- vote on the matter,

unless:

- the other **directors** approve the **director** being present: see s 195(2);
- **ASIC** approves the **director** being present: see s 195(3); or
- the interest does not have to be disclosed: see s 191.

(2) The **board** may vote on matters that relate to the **director's** interest in the **director's** absence.

(3) In relation to any transactions that relate to the **director's** interest:

(a) the **company** may proceed with any transaction that relates to the interest and the **director** may participate in the execution of any relevant document by or on behalf of the **company**;

(b) the **company** cannot avoid the transactions merely because of the **director's** interest; and

(c) the **director** may retain benefits under the transactions despite the **director's** interest.

The Company cannot avoid an agreement with a third party merely because a Director:

10.5.1 fails to make a disclosure of a conflict of interest or duty; or

10.5.2 is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

#### **10.6 Obligation of secrecy**

10.6.1 Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

(a) in the course of duties as an officer of the Company;

(b) by the Board or the Company in general meeting; or

(c) by law.

10.6.2 The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

10.6.3 This rule must not be interpreted as constraining or impeding a Director or Secretary from disclosing information to APRA.

## **CLAUSE 11 – DIRECTORS' REMUNERATION**

### **11.1 Restriction on payments to Directors (No equivalent provision)**

**Article 11.1 – Restriction on payments to Directors** – It is proposed that a new rule (Rule 11.1 of the proposed Constitution) be included to ensure there is clarity in respect to payments and remuneration for directors.

#### **New Article**

##### **11.1 Restrictions on payments to Directors**

Except as provided in rules 11.2, 11.3 and 12, the Company must not pay fees or other remuneration to a Director.

## 11.2 Remuneration of Directors (Previously clause 9.5)

**Article 11.2 – Remuneration of Directors** – It is proposed that the existing Rule 9.5 be replaced with a new rule (Rule 11.2 of the proposed Constitution) to include the term ‘Approved Fees’ which refers to fees, salary, bonuses, and other fees defined in the proposed Constitution that may be paid to a Director. In accordance with the current Constitution the proposed Rule 11.2 provides that the maximum sum of remuneration (‘Approved Fees’) to be paid to Directors is determined or varied by ordinary resolution of the members and is indexed annually.

Existing Article	New Article
<p><b>9.5 Remuneration of Directors</b></p> <p>(a) The aggregate limit of remuneration of <b>directors</b> is determined by resolution of <b>members</b> at the <b>AGM</b>;</p> <p>(b) The aggregate limit of remuneration approved by <b>members</b> will be indexed annually on 1 November using the Australian Bureau of Statistics, All Groups Consumer Price Index for Sydney (Publication Number 6401.0) for the latest quarter published prior to the annual review date; and</p> <p>(c) The individual <b>directors</b> are to be paid the remuneration that the <b>Board</b> determines by resolution.</p>	<p><b>11.2 Remuneration of Directors</b></p> <p>11.2.1 The maximum amount of Approved Fees to be paid to the Directors will be determined, and may be varied, by ordinary resolution of the members.</p> <p>11.2.2 The Approved Fees will be indexed annually on 1 November using the Australian Bureau of Statistics, All Groups Consumer Price Index for Sydney (Publication Number 6401.0) for the immediately preceding quarter.</p> <p>11.2.3 The Directors are entitled to be paid, out of the funds of the Company, an amount of Approved Fees which:</p> <p>(a) does not exceed in aggregate the amount determined by members under paragraph 11.2.1; and</p> <p>(b) is allocated among them:</p> <p>(i) on an equal basis having regard to the proportion of the relevant year for which each Director held office; or</p> <p>(ii) as otherwise decided by the Board; and</p> <p>(c) is provided in the manner the Board decides, which may include provision of non-cash benefits. If the Board decides to include non-cash benefits in the Approved Fees of a Director, the Board must also decide the manner in which the value of those benefits is to be calculated for the purposes of this rule.</p>

## 11.3 Payments to Directors with Board approval (Previously clause 9.6)

**Article 11.3 – Payments to directors with board approval** – It is proposed that the existing Rule 9.6 be replaced with a new rule (Rule 11.3 of the proposed Constitution) so that it:

- (a) broadens the extent of allowable payments to directors; and
- (b) removes the capability to make payments to directors who are employees of RBHS (see Rule 4.2.2 of the proposed Constitution) and replaces it with reasonable remuneration to Directors who provide services to RBHS in a professional or technical capacity where the amount payable is approved by the RBHS Board and is on reasonable commercial terms.

Existing Article	New Article
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#### 9.6 Payments to directors with board approval

With the approval of the **board**, the **company** may pay to a **director**:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a **director**;
- (b) reasonable remuneration where the **director** is an employee of the **company** and the terms of employment have been approved by the **board**; and
- (c) reasonable remuneration for goods supplied by the **director** to the **company** in the ordinary course of business.

#### 11.3 Payments to Directors with Board approval

With the approval of the Board, the Company may pay to a Director:

- 11.3.1 reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- 11.3.2 reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;
- 11.3.3 interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- 11.3.4 reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- 11.3.5 reasonable rent for premises leased by the Director to the Company.

#### 11.4 Termination Payments (No equivalent provision)

**Article 11.4 – Termination Payments** – It is proposed that a new rule (Rule 11.4 of the proposed Constitution) be included to require that the Company may only make a payment to a Director as compensation for loss of office or in connection with retirement from office with the approval of members in accordance with the Corporations Act.

#### New Article

##### 11.4 Termination Payments

The Company may only make a payment to a Director as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office) with the approval of members in accordance with Division 2 of Part 2D.2 of the Act.

#### CLAUSE 12 – OFFICERS’ INDEMNITY AND INSURANCE (PREVIOUSLY CLAUSE 12)

**Article 12 – Officers’ Indemnity and Insurance** – It is proposed that the existing Rule 12 be replaced by a new rule (Rule 12 of the proposed Constitution) to clarify that:

- (a) the indemnity extends to ‘Officers’ (as defined in the Corporations Act); and
- (b) the indemnity does not apply in respect of conduct involving a lack of good faith.

#### Existing Article

##### Division 12 Indemnity

##### 12.1. Indemnities for Officers and Former Officers

Corporations Act 2001 Commentary

#### New Article

##### 12. Officers’ Indemnity and Insurance

##### 12.1 Definitions

In this rule:

**Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

Section 199A restricts the **company** from giving an indemnity to **persons** who are, or have been, officers or auditors against certain liabilities they incur while acting in that position. Those liabilities include:

- liability (other than for legal costs) owed to the **company** or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H or s 1317HA;
- liability (other than for legal costs) owed to someone other than the **company** or a related body corporate and arising out of conduct involving a lack of good faith;
- liability for legal costs or expenses that the officer incurs:
- in defending proceedings where the **person** is found to have a liability (for which they could not be indemnified on the grounds described above);
- in defending criminal proceedings where the **person** is found guilty;
- in defending proceedings brought by **ASIC** or a liquidator for a court order if the grounds for the court order are established;
- in connection with proceedings for relief under the **Act** where the court denies relief.

Section 199B restricts the **company** from paying or agreeing to pay for insurance for a **person** who is or has been an officer or auditor of the **company** against liability (other than for legal costs) arising out of conduct involving a wilful breach of duty or a contravention of their duty not to misuse their position or information.

(1) In this rule **indemnified person** means an officer or former officer of the **company**.

(2) To the extent that the **Act**, the *Competition and Consumer Act 2010* (Cth) and any other applicable law permits:

(a) the **company** must indemnify (to the extent the **person** is not otherwise indemnified) an **indemnified person** against any liability that the **indemnified person** incurs as an officer of the **company** including, without limitation, legal costs and expenses incurred in participating or being involved in or in defending legal proceedings, including an inquiry, royal commission or other regulatory investigation;

**Officer** has the meaning given in section 9 of the Act.

## 12.2 Indemnity

12.2.1 Subject to and so far as permitted by the Act, the PHI Legislation, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

(a) the Company must indemnify every Officer of the Company against a Liability incurred as such an Officer to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company as a trustee or as an Officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith;

(b) subject to rule 12.2.2, the Company must make a payment (whether by way of advance, loan or otherwise) for costs and expenses (including legal expenses on a full indemnity basis) incurred by an Officer of the Company in defending an action for a Liability incurred as such an Officer; and

(c) the Company may indemnify any other employee of the Company at the Board's discretion.

12.2.2 An Officer must repay to the Company the amount advanced by the Company in respect of costs and expenses under rule 12.2.1(b) in the event that:

(a) judgment is not given in favour of the Officer;

(b) the indemnification is not permitted by the Act, the PHI Legislation, the *Competition and Consumer Act 2010* (Cth) or any other applicable law.

## 12.3 Insurance

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

## 12.4 Former officers

The indemnity in favour of Officers under rule 12.2 is a continuing indemnity. It applies in respect of all acts done by a person while an Officer of the Company even though the person is not an Officer at the time the claim is made.

## 12.5 Deeds

Subject to the Act, the PHI Legislation, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 12, enter into an agreement with a person who is or has been an Officer of the Company, to give effect to the rights of the person under this rule 12 on any terms and conditions that the Board thinks fit.

(b) the **company** may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to liability incurred by an **indemnified person** as an officer of the **company**; and

(c) the **company** may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to any other **person**.

(3) The indemnity in sub-rule 2(a):

(a) applies in relation to an **indemnified person** for all incidents occurring during the period that **person** is an officer of the **company**, even though a claim is made against the **indemnified person** after they have ceased to be an officer of the **company**; and

(b) covers costs and expenses in defending proceedings, whether civil or criminal, in which judgment is given in favour of the **indemnified person** or in which the **indemnified person** is acquitted.

(4) The indemnity in sub-rule 2(a) does not cover any liability that arises out of conduct which is wilful breach of duty or neglect or a lack of good faith.

**CLAUSE 13 – BOARD MEETINGS**

**13.1 Convening Board Meetings (Previously clause 10.1)**

No substantive change

**13.2 Notice of Board Meeting (Previously clause 10.1(2))**

No substantive change

**13.3 Use of technology (Previously clause 10.1(4))**

No substantive change

**13.4 Chairing Board Meetings (Previously clauses 8.8 and 10.4)**

**Article 13.4 – Chairing Board meetings** – It is proposed that the existing rules (Rule 8.8 and Rule 10.4 of the existing Constitution) be combined and replaced with a single new rule (Rule 13.4 of the proposed Constitution). Further, the proposed new rule includes the requirement that the Chair be an Independent Director, which is a regulatory requirement (CPS 510 – Governance).

Existing Article	New Article
<p><b>8.8. Chair and Deputy Chair</b></p> <p>(1) The <b>board</b> may elect a chair and deputy chair at the first <b>board</b> meeting following an annual general meeting and who, subject to resignation or removal under this rule 8.8, will serve in the position until the next annual general meeting or until such time as the <b>board</b> determines as it sees fit.</p> <p>(2) The <b>board</b> by resolution may remove the chair or deputy chair from the position of chair at any time.</p>	<p><b>13.4 Chairing Board meetings</b></p> <p>13.4.1 At the first meeting of the Board following an AGM, the Board must elect an Independent Director to chair its meetings (<b>Chair</b>). The Board may also elect an Independent Director as a deputy chair (<b>Deputy Chair</b>).</p> <p>13.4.2 The term of office of the Chair and the Deputy Chair is from their election until the earlier of:</p>

#### 10.4. Chair of Board

The chair elected under rule 8.8 will preside as chair at every meeting of the **board**. If there is no chair elected under rule 8.8, or if the chair is not present within 10 minutes after the time appointed for holding the meeting, or if the chair is unwilling to act, then the deputy chair shall preside over the meeting. If there is no deputy chair elected under rule 8.8, or if the deputy chair is not present within 10 minutes after the time appointed for holding the meeting, or if the deputy chair is unwilling to act, then the **directors** present must choose one of their number to chair the meeting.

- (i) the election for the same office following the next AGM;
- (ii) him or her resigning from the office of Chair or Deputy Chair (as applicable);
- (iii) him or her being removed from the office of Chair or Deputy Chair (as applicable) by resolution of the Board; or
- (iv) him or her ceasing to be a Director.

13.4.3 The Chair shall preside as the chair of every meeting of the Board during their term of office.

13.4.4 If there is no Chair or the Chair is not present within 10 minutes after the time for which a Board meeting is called or is unwilling to act, and a Deputy Chair has been elected, the Deputy Chair shall preside as the chair of the Board meeting. If no Deputy Chair has been elected, the Directors present must elect a Director present to chair the meeting.

#### 13.5 Quorum (Previously clause 10.3)

No substantive change

#### 13.6 Majority decisions (Previously clause 10.2)

No substantive change

#### 13.7 Procedural rules (Previously clause 10.1(3))

No substantive change

#### 13.8 Written resolution (Previously clause 10.6)

No substantive change

#### 13.9 Additional provisions concerning written resolutions (Previously clause 10.6)

No substantive change

#### 13.10 Valid proceedings (Previously clause 10.7)

No substantive change

### CLAUSE 14 – MEETINGS OF MEMBERS

#### 14.1 Annual general meeting (Previously clause 7)

**Article 14.1 – Annual General Meetings** – It is proposed that the existing Rule 7.1 be replaced with a new rule (Rule 14.1 of the proposed Constitution) by removing the 'Corporations Act 2001 Commentary' as this information may change as amendments to the Act are made.

Existing Article	New Article
Division 7 Annual General Meetings	14.1 Annual general meeting
7.1 Annual general meeting	The Company must hold an AGM as required by section 250N.

The **company** must hold an annual general meeting as required by section 250N of the **Act**.

#### **Corporations Act 2001 Commentary**

The **company** must hold an annual general meeting (AGM) at least once in each calendar year and within five (5) months after the end of its financial year; see s250N (2).

An AGM is to be held in addition to any other **general meetings** held by the **company** in the year; see s250N (3).

The **directors** must lay before the AGM the annual financial report, the **directors'** report and the auditor's report for the last financial year that ended before the AGM.

#### **Business of AGM**

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) consideration of the annual financial report, **directors'** report and auditor's report;
- (b) the election of **directors**;
- (c) the appointment of the auditor; and
- (d) the fixing of the auditor's remuneration; see s250R.

#### **Questions and comments by members on management**

The chairperson of the AGM must allow a reasonable opportunity for the **members** as a whole at the meeting to ask questions about, or make comments on, the management of the **company**; see s250S.

#### **Questions by members of auditors**

If the **company's** auditor or his or her representative is at the meeting, the chairperson of the AGM must allow a reasonable opportunity for the **members** as a whole at the meeting to ask the auditor or representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report; see s250T.

#### **Members' access to minutes**

The **company** must ensure that the minute books for the meetings of its **members** and for resolutions of **members** passed without meetings are open for inspection by **members** free of charge; see s251B (1).

A **member** of the **company** may ask the **company** in writing for a copy of:

- (i) any minutes of a meeting of the **company's members** or an extract of the



minutes; or

(ii) any minutes of a resolution passed by **members** without a meeting; see s251B (2).

**14.2 Calling meeting of members (Previously clause 5.1)**

No substantive change

**14.3 Notice of meeting (Previously clause 5 (Commentary only))**

No substantive change

**14.4 Short notice (Previously clause 5 (Commentary only))**

No substantive change

**14.5 Postponement or cancellation (Previously clause 5.1(2))**

No substantive change

**14.6 Fresh notice (Previously clause 5.2(2))**

No substantive change

**14.7 Technology (Previously clause 5 (Commentary only))**

No substantive change

**14.8 Accidental omission (Previously clause 5.3)**

No substantive change

**CLAUSE 15 – PROCEEDINGS AT MEETINGS OF MEMBERS**

**15.1 Member present at meeting (previously clause 5.4(1))**

No substantive change

**15.2 Quorum (Previously clause 5.3)**

No substantive change

**15.3 Quorum not present (Previously clauses 5.4(2) and 5.4(3))**

No substantive change

**15.4 Chairing meetings of members (Previously clause 5.5)**

No substantive change

**15.5 Attendance at general meetings (Previously clause 5.1A)**

No substantive change

**15.6 Adjournment (Previously clause 5.2 (in part))**

No substantive change

**15.7 Business at adjourned meetings (Previously clause 5.2 (in part))**

No substantive change

**CLAUSE 16 – PROXIES AND ATTORNEYS**

**16.1 Appointment of proxies (Previously clause 6.3)**

No substantive change

**16.2 Member's attorney (No equivalent provision)**

**Article 16.2 – Member's attorney** – It is proposed that a new rule (Rule 16.2 of the proposed Constitution) be included to allow for a member to appoint an attorney to act on his or her behalf at a meeting of members.

**New Article**

**16.2 Member's attorney**

16.2.1 A member may appoint an attorney to act at a meeting of members. A power of attorney must be signed in the presence of at least one witness.

16.2.2 An attorney appointed by a member may be authorised to appoint a proxy for the member.

**16.3 Deposit of proxy appointment forms, etc (Previously clause 6.5(1))**

No substantive change

**16.4 Appointment for particular meeting, standing appointment and revocation (No equivalent provision)**

**Article 16.4 – Appointment for particular meeting, standing appointment and revocation** – It is proposed that a new rule (Rule 16.4 of the proposed Constitution) be included to clarify when members can appoint a proxy or attorney, make a standing appointment and revoke an appointment.

**New Article**

**16.4 Appointment for particular meeting, standing appointment and revocation**

A member may appoint a proxy or attorney to act at a particular meeting of members or make a standing appointment and may revoke any appointment.

**16.5 Position of proxy or attorney if member present (Previously clause 6.3(4))**

No substantive change

**16.6 Priority of conflicting appointments of attorneys (No equivalent provision)**

**Article 16.6 – Priority of conflicting appointments of attorneys** – It is proposed that a new rule (Rule 16.6 of the proposed Constitution) be included to clarify the position where there are conflicting appointments of attorneys.

**New Article**

**16.6 Priority of conflicting appointments of attorneys**

If more than one attorney appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

16.6.1 an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and

16.6.2 subject to rule 16.6.1, an attorney appointed under a more recent appointment may act to the exclusion of an attorney appointed earlier in time.

**16.7 More than one current proxy appointment (Previously clause 6.4(5))**

No substantive change

**16.8 Continuing authority (Previously clause 6.6)**

No substantive change

**CLAUSE 17 – ENTITLEMENT TO VOTE**

**17.1 Number of votes (Previously clauses 6.1 and 6.3(6))**

**Article 17.1 – Number of votes** – It is proposed that the operation of the existing Rules 6.1 and 6.3(6) be replaced by a new rule (Rule 17.1 of the proposed Constitution) and make changes so that a proxy can, on a show of hands, vote (but a member who is also a proxy only has one vote on a show of hands). The existing rule excludes a proxy from having a right to vote on a show of hands.

Existing Article	New Article
<p><b>6.1. Voting</b></p> <p>(1) A resolution put to the vote at a <b>general meeting</b> must be decided on a show of hands unless a poll is demanded before or immediately after declaration of the result of the vote on a show of hands. Unless a poll is demanded under sub-rule (5), the chair's declaration of a decision on a show of hands is final. Neither the chair nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against on a show of hands. The minutes only need to record that the resolution was passed or not passed.</p> <p>(2) Subject to section 250A (4) of the <b>Act</b>:</p> <p>(a) each <b>member</b> has one vote on a show of hands or a poll; and</p> <p>(b) a <b>member</b> who is present and entitled to vote and is also a proxy or attorney of another <b>member</b> has one vote on a show of hands.</p> <p>(3) Before a <b>general meeting</b> votes on a resolution, the chair must inform the meeting:</p> <p>(a) how many proxy documents the <b>company</b> has received that validly appoint a <b>person</b> present at the meeting as a proxy;</p> <p>(b) how many of these proxy documents direct the proxies how to vote on the resolution; and</p> <p>(c) how the proxies are directed to vote on the resolution.</p>	<p><b>17.1 Number of votes</b></p> <p>17.1.1 Subject to sections 250BB(1) and 250BC and rule 17.1.2:</p> <p>(a) each member has one vote on a show of hands or a poll; and</p> <p>(b) a member who is present and entitled to vote and is also a proxy or attorney of another member has one vote on a show of hands.</p> <p>17.1.2 A member whose premiums under a complying private health insurance policy issued by the Company are in arrears as at date of the relevant meeting of members is not entitled to cast a vote at that meeting, whether in person or by proxy.</p>

(4) If an equal number of votes are cast for and against a resolution at a **general meeting**, the chair of the meeting has a casting vote whether or not the chair is a **member**. The chair's casting vote is in addition to any vote he or she may have in his or her capacity as a **member** or proxy. The chair has discretion whether or not to use his or her casting vote.

(5) Each of the chair of the meeting and any **member** entitled to vote who is present at a meeting in person or by proxy is entitled to demand a poll on any resolution (except a resolution concerning the election of the chair of a meeting). The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

(6) No **member** shall be entitled to vote at any **general meeting** if the premiums payable by the **member** under a complying health insurance policy issued by the **company** are in arrears at the date of the meeting, nor shall any **person** be entitled to vote on behalf of any such **member**.

(7) If a proxy purports to vote in a way or in circumstances that contravene section 250A (4) of the Act, on a show of hands the vote is invalid and the company must not count it and on a poll rule 6.2(2) applies.

(8) An objection to a **person's** right to vote at a **general meeting**:

(a) may only be made at the meeting or adjourned meeting at which the vote objected to is cast; and

(b) must be determined by the chair of the meeting, whose decision is final.

### **6.3. Who can appoint a Proxy**

(6) A proxy does not have a right to vote on a show of hands except in his or her capacity as a **member**.

### **17.2 Casting vote of chair (Previously clause 6.1(4))**

No substantive change

### **17.3 Voting restrictions (No equivalent provision)**

**Article 17.3 – Voting restrictions** – It is proposed that a new rule (Rule 17.3 of the proposed Constitution) be included to meet the respective Corporations Act obligations for voting restrictions.

#### **New Article**

### **17.3 Voting restrictions**

If:

17.3.1 the Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and

17.3.2 the notice of the meeting at which the resolution is proposed states that fact, those members have no right to vote on that resolution and the Company must not count

any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 18.3.3 applies.

**17.4 Decision on right to vote (Previously clause 6.1(8))**

No substantive change

**CLAUSE 18 – HOW VOTING IS CARRIED OUT**

**18.1 Method of voting (Previously clause 6.1)**

No substantive change

**18.2 Demand for a poll (Previously clause 6.1(5))**

No substantive change

**18.3 When and how polls must be taken (Previously clause 6.2)**

No substantive change

**CLAUSE 19 – SECRETARY (PREVIOUSLY CLAUSE 13)**

**Article 19 – Secretary** – It is proposed that the existing Rule 13 be replaced with a new rule (Rule 19 of the proposed Constitution). The new rule provides:

- (a) for an assessment of a prospective Secretary against the Fit and Proper Policy which is a regulatory requirement (CPS 520 – Fit and Proper); and
- (b) further circumstances for automatic disqualification and approval.

Existing Article	New Article
<p><b>Division 13 SECRETARY</b></p> <p><b>13.1. Secretary</b></p> <p>The <i>board</i>:</p> <ul style="list-style-type: none"> <li>(a) must appoint at least one individual; and</li> <li>(b) may appoint more than one individual,</li> </ul> <p>to be a <b>secretary</b> either for a specified term or without specifying a term.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;"><b>Corporations Act 2001 Commentary</b></p> <p>Under s 204A (2), the <b>company</b> must have at least 1 <b>secretary</b> and at least 1 <b>secretary</b> must reside in Australia.</p> <p>Section 204B (1) provides that only individuals (not bodies corporate) who are at least 18 may be secretaries.</p> <p>Section 204B (2) provides that a <b>person</b> who has been disqualified from managing corporations under Part 2D.6 may only be appointed a <b>secretary</b> if the appointment is made with <b>ASIC</b>'s permission under s 206F or the Court's leave under s 206G.</p> </div> <p>Subject to rule 13.2 the <i>board</i> may determine the <b>secretary</b>'s terms of</p>	<p><b>19. Secretary</b></p> <p><b>19.1 Appointment of Secretary</b></p> <p>19.1.1 The Board:</p> <ul style="list-style-type: none"> <li>(a) must appoint at least one individual; and</li> <li>(b) may appoint more than one individual, to be a Secretary either for a specified term or without specifying a term.</li> </ul> <p>19.1.2 A person is not eligible to be a Secretary unless:</p> <ul style="list-style-type: none"> <li>(a) the person has been assessed in accordance with the Fit and Proper Policy; and</li> <li>(b) is determined by the Board to meet the requirements of the Fit and Proper Policy.</li> </ul> <p>19.1.3 A Secretary may be, but is not required to be, a member.</p> <p><b>19.2 Terms and conditions of office</b></p> <p>A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.</p> <p><b>19.3 Cessation of Secretary's appointment</b></p>

appointment, powers and duties. At any time, the **board** may vary or revoke a determination, or an appointment, whatever the terms of the appointment and whether or not the appointment was expressed to be for a specified term.

### 13.2. Resignation of Secretary

(1) A **secretary** may resign by giving the **company** notice of the **secretary's** resignation.

(2) The **secretary's** office becomes vacant:

(a) if the notice of resignation specifies a date of resignation — on the date of resignation; or

(b) otherwise — on the date the **company** receives the notice of resignation.

### 13.3. Cessation of secretary's appointment

The **person** automatically ceases to be eligible to be a **secretary**, and, if already appointed, automatically ceases to be a **secretary** if the **person**:

(a) is not permitted by the **Act** (or an order made under the **Act**) to be a secretary of a company;

(b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the **company** under section 206F or 206G of the **Act**;

(c) is determined to be a disqualified **person** under the **Private Health Insurance Act**;

(d) becomes of unsound mind or mentally incapable of performing the functions of that office; or

(e) is removed from office under rule 13.4.

### 13.4. Removal from Office

The **board** may remove a **secretary** from that office whether or not the appointment was expressed to be for a specified term.

The person automatically ceases to be a Secretary if the person:

19.3.1 is not permitted by the Act (or an order made under the Act) to be a secretary of a company;

19.3.2 becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;

19.3.3 is determined by the Board not to meet the requirements of the Fit and Proper Policy;

19.3.4 is determined to be a disqualified person under the PHI (Prudential Supervision) Act;

19.3.5 becomes of unsound mind or physically or mentally incapable of performing the functions of that office;

19.3.6 resigns by notice in writing to the Company; or

19.3.7 is removed from office under rule 19.4.

### 19.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## CLAUSE 20 - MINUTES

### 20.1 Minutes must be kept (Previously clause 14.1)

No substantive change

### 20.2 Minutes as evidence (Previously clause 14.2)

No substantive change

### 20.3 Inspection of minute books (Previously clause 14.3)

No substantive change

## **CLAUSE 21 COMMON SEALS (NO EQUIVALENT PROVISIONS)**

**Article 21 – Common Seals** – It is proposed that a new rule (Rule 21 of the proposed Constitution) be included to allow for RBHS to decide whether or not the Company has a common seal and to set out the use of the Company's common seal.

### **New Article**

#### **21. Common Seals**

##### **21.1 Common seal**

The Board:

21.1.1 may decide whether or not the Company has a common seal; and

21.1.2 is responsible for the safe custody of the common seal of the Company and any duplicate seal it decides to adopt under section 123(2).

##### **21.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

##### **21.3 Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed by:

21.3.1 two Directors; or

21.3.2 one Director and one Secretary.

##### **21.4 Execution of documents not using a seal**

The Company may execute a document without using a common seal and such document will be taken to be duly executed if it is signed by:

21.4.1 two Directors;

21.4.2 one Director and one Secretary; or

21.4.3 by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## **CLAUSE 22 FINANCIAL REPORTS AND AUDITS**

### **22.1 Company must keep financial records (Previously clause 14.4)**

No substantive change

### **22.2 Financial Reporting (Previously clause 14.5)**

No substantive change

### **22.3 Audit or review (Previously clause 14.6)**

No substantive change

### **22.4 Conclusive reports (Previously clause 14.7)**

No substantive change

**22.5 Inspection of financial records and books (Previously clause 14.8)**

No substantive change

**CLAUSE 23 – REGISTERS (PREVIOUSLY CLAUSE 14.9)**

No substantive change

**CLAUSE 24 – ACTUARY (NO EQUIVALENT PROVISION)**

**Article 24 – Actuary** – It is proposed that a new rule (Rule 24 of the proposed Constitution) be included to meet the requirements to appoint an actuary as prescribed under the *Private Health Insurance (Prudential Supervision) Act 2015* (Cth).

**New Article**

**24. Actuary**

24.1.1 The Directors must appoint a person as the Company's Appointed Actuary in accordance with the PHI (Prudential Supervision) Act and the Prudential Standards.

24.1.2 The eligibility, removal, rights and duties of the Appointed Actuary are regulated by the PHI (Prudential Supervision) Act and the Prudential Standards.

**CLAUSE 25 – WINDING UP (PREVIOUSLY CLAUSE 2.7)**

No substantive change

**CLAUSE 26 – NOTICES (PREVIOUSLY CLAUSE 1.5)**

**26.1 Notices by Company (Previously clause 1.5)**

No substantive change

**26.2 When notice is given (Previously clause 1.5)**

No substantive change

**26.3 Business days (Previously clause 1.5)**

No substantive change

**26.4 Counting days (Previously clause 1.5)**

No substantive change

**26.5 Notices to “lost” members (Previously clause 1.5)**

No substantive change